

**Graphic Communications International Union,  
Local 388M, and Graphic Communications  
International Union, District Council No. 2  
(Georgia Pacific Corporation) and Patrick J.  
Gallagher, Jr. Case 32-CB-3319**

December 31, 1990

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
CRACRAFT AND OVIATT

Upon a charge and a first amended charge filed by Patrick J. Gallagher Jr. on, respectively, October 12 and November 21, 1989, the General Counsel of the National Labor Relations Board issued a complaint on December 1, 1989, against the Respondents, Graphic Communications International Union, Local 388M (Local 388M), and Graphic Communications International Union, District Council No. 2 (District Council), alleging that the Respondents violated Section 8(b)(1)(A) of the National Labor Relations Act.

The complaint alleges that about December 21, 1988, Respondent Local 388M processed internal union charges against Patrick J. Gallagher Jr., Vito Paxia, and Joseph Fernandez, alleging that the three had testified falsely against another union member in an arbitration proceeding. Respondent District Council thereafter processed the charges up to and through an intraunion trial on February 10, 1989, and a second intraunion trial occurring August 25, 1989, found the three guilty as charged, and assessed fines against them. The complaint further alleges that the Respondents engaged in the above-described conduct because Gallagher, Paxia, and Fernandez testified on behalf of Georgia Pacific Corporation (Georgia Pacific or the Employer) at an arbitration hearing concerning the discharge of Norvin Powell,<sup>1</sup> testimony that the Respondents knew, or reasonably should have known, is protected by Section 7 of the Act. The complaint alleges that by processing the charges through an intraunion trial, finding the three guilty, and assessing fines, the Respondents have restrained and coerced, and are restraining and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act and thereby have violated Section 8(b)(1)(A) of the Act.

On May 14, 1990, the parties jointly moved the Board to transfer the proceedings to the Board, without benefit of a hearing before an administrative law judge, and submitted a proposed record consisting of the formal papers and the parties' stipulation of facts with attached exhibits. On June 21, 1990, the Deputy Executive Secretary, by direction of the Board, issued an order granting the motion, approving the stipulation, and transferring the proceeding to the Board. Thereafter, the General Counsel filed an opening brief, the

Respondents filed an opposition brief, and the General Counsel filed a reply to the Respondents' opposition brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in the case, the Board makes the following<sup>2</sup>

**FINDINGS OF FACT**

**I. JURISDICTION**

The Employer, Georgia Pacific Corporation, with an office and place of business in Modesto, California, is engaged in the nonretail manufacture and sale of paper boxes. During the past 12 months, Georgia Pacific, in the course and conduct of its business operations, purchased and received goods or services valued in excess of \$50,000 directly from suppliers outside the State of California. We find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. We further find that the Respondents, Local 388M and District Council No. 2, are labor organizations within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICE**

The issue presented is whether the Respondents have violated Section 8(b)(1)(A) by processing internal union charges alleging that certain of its members falsely testified at an arbitration hearing, finding those members guilty of the charges and fining them.

**A. Facts**

Respondent Local 388M represents a bargaining unit of Georgia Pacific employees, and is party to a collective-bargaining agreement with Georgia Pacific. Powell, Gallagher, Paxia, and Fernandez are all members of Local 388M and employees of Georgia Pacific. About September 2, 1987, Powell was terminated by Georgia Pacific following an altercation with Gallagher in which Powell allegedly physically assaulted Gallagher by "headbutting" him. Powell filed a grievance regarding his termination that was thereafter submitted to binding arbitration pursuant to the collective-bargaining agreement.

Gallagher, Paxia, and Fernandez testified on behalf of the Employer at the arbitration hearing, and Gallagher and Paxia testified that the headbutting incident occurred. Powell denied that the headbutting incident took place. Additionally, Gallagher, Paxia, and Fernandez testified regarding alleged earlier incidents involving Powell.

<sup>1</sup> The complaint inadvertently referred to Powell as Nowell Powell.

<sup>2</sup> The Respondents' request for oral argument is denied as the stipulation, exhibits, and briefs provide a sufficient basis for decision in this case.

The arbitrator found that Powell “did inflict an unwanted touching [viz, a battery] by ‘headbutting’ Gallagher.”<sup>3</sup> The arbitrator nevertheless found that the Employer did not have just cause for Powell’s discharge, and reduced Powell’s discipline to a 6-month suspension. In so finding, the arbitrator ruled that although Powell’s battery against Gallagher could not be condoned, the evidence did not support the Employer’s argument that the discharge was justified because Powell’s conduct was part of a long history of alleged violent and intimidating conduct by Powell in the workplace.

About December 21, 1988, Powell filed internal union charges with Respondent Local 388M, alleging that Gallagher, Paxia, and Fernandez falsely testified against him at the arbitration hearing. Respondent Local 388M forwarded the charges to Respondent District Council, which held an intraunion trial at which Gallagher, Paxia, and Fernandez were found guilty as charged and were fined. Following the filing of an appeal by the three pursuant to the Respondents’ internal procedures, the District Council rescinded its decision and rescheduled a second trial on the same charges.<sup>4</sup> At the second proceeding, Gallagher, Paxia, and Fernandez were again found guilty of giving false testimony at the arbitration hearing, and were assessed the same fines.<sup>5</sup> No appeal was filed.

The parties stipulated that the Respondents’ actions were undertaken in a good-faith attempt to comply with the union constitutions. The parties also stipulated, for the purpose of this proceeding only, that there is no contention that the alleged truth or falsity of the testimony by Gallagher, Paxia, and Fernandez at the arbitration proceeding is an issue here.

### B. Contentions of the Parties

The General Counsel contends that under Board law a union violates the Act by fining members for testifying in grievance or arbitration proceedings, and that the Respondents’ actions violate this rule. The General Counsel further argues that union members facing such internal union charges need not exhaust any internal union appeal process before seeking relief from the Board.

The Respondents acknowledge that it is unlawful to fine members for testifying at grievance or arbitration proceedings. They argue, however, that a union may process internal union charges alleging, as in this case, the giving of *false* testimony against another member at an arbitration hearing, when such charges are processed in good-faith compliance with internal union

procedures established in accordance with the Labor-Management Reporting and Disclosure Act (LMRDA).<sup>6</sup> The Respondents rely on *Teamsters Local 557 (Liberty Transfer)*, 218 NLRB 1117, 1121 (1975), and *Teamsters Local 788*, 190 NLRB 24, 27 (1971), where administrative law judges stated, in dicta, that they were not suggesting that a union may not discipline a member for testifying falsely at arbitration proceedings where perjury has been established in a criminal prosecution by a court of competent jurisdiction.

The Respondents contend that although the Board has thus approved of internal union discipline for false testimony at an arbitration proceeding, the court conviction standard is erroneous because it implies that internal union proceedings to determine the truth or falsity of testimony are inherently biased. The Respondents argue further that the standard is impractical due to the difficulty of obtaining criminal prosecution of a union member for perjury, and that the standard would preclude union discipline even where an arbitrator made a specific finding of perjury.

The Respondents additionally contend that their actions were a lawful attempt, under *Scofield v. NLRB*, 394 U.S. 423 (1969), to enforce their constitutional rules that prohibit a member from “wrong[ing] a brother or sister member” or “attempt[ing to] deprive another member . . . of employment from personal motives or with malicious intent or to supersede him in any manner.” The Court held in *Scofield* that

§ 8(b)(1) leaves a union free to enforce a properly adopted rule which reflects a legitimate union interest, impairs no policy Congress has imbedded in the labor laws, and is reasonably enforced against union members who are free to leave the union and escape the rule.

394 U.S. at 430. The Respondents alternatively argue that Board action should be stayed pending the exhaustion of all internal union appeal procedures.

### C. Discussion

It is axiomatic that grievance and arbitration procedures are a fundamental component of national labor policy. *Steelworkers v. Gulf Navigation*, 363 U.S. 574, 581 (1960). It is essential to the integrity of these processes that witnesses feel free to testify before an arbitrator without fear of reprisal from either the employer or the union. Accordingly, Board law holds that a union violates Section 8(b)(1)(A) of the Act by disciplining members for appearing and testifying in arbitration proceedings in a manner contrary to the interest of other employees. *Oil Workers Local 7-103 (DAP*,

<sup>3</sup>In so finding, the arbitrator specifically credited the testimony of Vito Paxia.

<sup>4</sup>The first trial was set aside on the basis that the three charged members had been given insufficient notice of the hearing against them.

<sup>5</sup>Gallagher was fined \$500. Paxia and Fernandez were fined \$300. Each employee paid his fine.

<sup>6</sup>29 U.S.C. § 401 et seq.

*Inc.*), 269 NLRB 129, 130 (1984); *Oil Workers Local 4-23 (Gulf Oil)*, 274 NLRB 475 (1985).

As the Respondents observe, the Board has also recognized, at least in dictum, the right of a union to discipline a member for giving perjured testimony at an arbitration proceeding where perjury has been established by a forum other than the internal union procedure. *Liberty Transfer*, supra; *Teamsters Local 788*, supra.<sup>7</sup> We explicitly adopt that standard today, and reject the Respondents' argument that the only prerequisite to imposing discipline is that a union, when faced with charges alleging false testimony, process those charges in good-faith compliance with internal union procedures established in accordance with the LMRDA. The right of an employee to give testimony at arbitration proceedings without fear of reprisal would be a precarious one if a union were free to determine unilaterally whether the testimony was false and to impose discipline.<sup>8</sup> A standard requiring a finding of perjury—as opposed to merely inaccurate testimony—to support internal union discipline will fully ensure that employees will freely participate in arbitration proceedings without fear of unsubstantiated disciplinary measures.<sup>9</sup>

Our ruling today fully comports with the Supreme Court's decision in *Scofield*. *Scofield* directs that a union rule may not be enforced if it "invades or frustrates an overriding policy of the labor laws." 394 U.S. at 429. We find that Board approval of the Respondents' attempt to enforce their rules in this case would adversely affect the integrity of the grievance and arbitration machinery by having a chilling effect on the willingness of their members to testify at future arbitration proceedings.<sup>10</sup>

Accordingly, we hold that objective evidence of perjury is necessary to support internal union discipline for false testimony given at an arbitration proceeding. It is undisputed that there is no evidence of convictions of perjury in this case regarding the testimony of Gallagher, Paxia, and Fernandez. We therefore find that the Respondents violated Section 8(b)(1)(A) of the Act

by processing internal union charges against them alleging that they gave false testimony, finding them guilty, and fining them.<sup>11</sup>

#### CONCLUSIONS OF LAW

1. Georgia Pacific Corporation is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Respondent Local 388M and Respondent District Council are labor organizations within the meaning of Section 2(5) of the Act.

3. The Respondents, by processing internal union charges against Patrick J. Gallagher Jr., Vito Paxia, and Joseph Fernandez, holding a trial and finding them guilty of giving false testimony at an arbitration hearing, and fining them, have restrained and coerced them in the exercise of the rights guaranteed them by Section 7 of the Act, and thereby engaged in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondents have engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the Act, we shall order that they cease and desist and take certain affirmative action designed to effectuate the policies of the Act.

We shall order that the Respondents refund to Patrick J. Gallagher Jr., Vito Paxia, and Joseph Fernandez the full amounts of the fines assessed against them, with interest to be computed in the manner set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall further order that the Respondents remove from their records all references to the proceedings and fines against Gallagher, Paxia, and Fernandez, and notify them in writing that this action has been taken.<sup>12</sup> In addition, in order to place the three employees in the position they would have been absent the Respondents' unfair labor practices, we shall order the Respondents to make them whole for all legal and other expenses they incurred, with interest computed in the manner set forth in *New Horizons*, supra. See *La-*

<sup>7</sup>Both of these cases refer to a conviction of perjury by a court of competent jurisdiction. The Respondents argue, however, that objective evidence of perjured testimony other than a court conviction of perjury, e.g., a specific perjury finding by an arbitrator, may serve as a basis for the imposition of internal union discipline. We need not pass on whether such a finding would be sufficient in the absence of any contention by the Respondents that such a finding has been made in this case regarding the testimony of Gallagher, Paxia, and Fernandez.

<sup>8</sup>That is especially true in cases such as this, where the employee's testimony at arbitration has been antagonistic to the Union's position.

<sup>9</sup>This standard is consonant with the Board's requirement that an employer has the burden of establishing perjury in order to lawfully discharge an employee for giving false testimony at a Board proceeding. *Big Three Industrial Gas & Equipment Co.*, 212 NLRB 800, 803-804 (1974), enf'd. mem. 512 F.2d 1404 (5th Cir. 1975).

<sup>10</sup>We reject the Respondents' contention that the charged members are required to exhaust internal union appeal procedures before they may seek remedial relief from the Board. The Respondents' appeal procedures in this case must yield to the overriding policy of promoting the integrity of the grievance and arbitration machinery. See *Teamsters Local 788*, supra, 190 NLRB at 26.

<sup>11</sup>We do not view *Cement Workers D-357 (Southwestern Portland Cement)*, 288 NLRB 1156, 1157 (1988), as inconsistent with the standard we have applied in this case. Although there is language in *Cement Workers* that could be broadly read to mean that a union could not discipline a member even if he gave perjured testimony, there was no objective evidence in that case that the union member in question had perjured himself. Thus, there was no reason for the Board to consider whether the union in that case could lawfully have disciplined the member if it had such objective evidence.

<sup>12</sup>The General Counsel has requested that we order the Respondents to individually mail notices to all members. We find such a measure to be unnecessary in the absence of any showing that posting of the notice on the bulletin board maintained by the Respondents at the Employer's facility is inadequate. We further find the requested order to be unwarranted as this case does not involve egregious or widespread unfair labor practices.

*borers Northern California Council (Baker Co.), 275 NLRB 278 (1985).*

### ORDER

The National Labor Relations Board orders that the Respondents, Graphic Communications International Union, Local 388M, and Graphic Communications International Union, District Council No. 2, Oakland, California, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Restraining and coercing employees in the exercise of their rights guaranteed by Section 7 of the Act, by processing internal union charges against member/employees, holding a trial and finding them guilty of giving false testimony at an arbitration hearing, and fining them, unless perjury has been established in another forum.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind and refund the fines assessed against Patrick J. Gallagher Jr., Vito Paxia, and Joseph Fernandez, with interest computed in the manner set forth in the remedy section of this decision.

(b) Reimburse Patrick J. Gallagher Jr., Vito Paxia, and Joseph Fernandez for all legal and other expenses they incurred, with interest computed in the manner set forth in the remedy section of this decision.

(c) Remove from their records all references to the proceedings and fines against Gallagher, Paxia, and Fernandez and notify them in writing that this action has been taken.

(d) Post at their business office and other places where notices to their members are customarily posted, including their bulletin board at the Employer's Modesto, California facility, copies of the attached notice marked "Appendix."<sup>13</sup> Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondents' authorized represent-

ative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

### APPENDIX

NOTICE TO MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT restrain and coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act, by processing internal union charges against member/employees, holding a trial and finding them guilty of giving false testimony at an arbitration hearing, and fining them, unless perjury has been established in another forum.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind and refund the fines assessed against Patrick J. Gallagher Jr., Vito Paxia, and Joseph Fernandez, with interest.

WE WILL reimburse Patrick J. Gallagher Jr., Vito Paxia, and Joseph Fernandez for all legal and other expenses they incurred, with interest.

WE WILL remove from our records all references to the proceedings and fines against Gallagher, Paxia, and Fernandez and notify them in writing that this action has been taken.

GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, LOCAL 388M, AND GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, DISTRICT COUNCIL No. 2

<sup>13</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."